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April 14, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

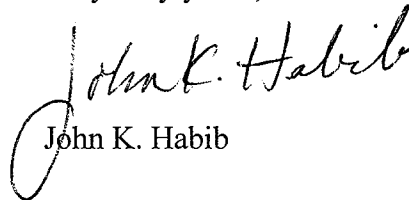
Re: NSTAR Gas Company, D.T.E. 06-10

Dear Secretary Cottrell:

On behalf of NSTAR Gas Company (the "Company"), please find attached the Company's Motion for Protective Treatment of Confidential Information regarding the Company's responses to information requests filed in the above-referenced proceeding.

Thank you for your consideration and assistance in this matter.

Very truly yours,

  
John K. Habib

Enclosures

cc: Carol Pieper, Hearing Officer  
Jamie Tosches, Assistant Attorney General  
Service List

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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NSTAR Gas Company )  
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D.T.E. 06-10

**MOTION OF NSTAR GAS COMPANY  
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes NSTAR Gas Company (“NSTAR Gas” or the “Company”) and hereby requests that the Department of Telecommunications and Energy (the “Department”) grant protection from public disclosure certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D. The Company requests that the Department protect from public disclosure bid- and price-related terms in Exhibits AG-1-1 (b)(Att.) through AG-1-1(g)(Att.), each CONFIDENTIAL, and Exhibit AG-1-4(a)(Att.) CONFIDENTIAL, each filed on March 21, 2006, in response to information requests asked of the Company by the Attorney General in this proceeding. The information contained in these exhibits should be protected from public disclosure because they include bid and/or price information that, if released to the public, would jeopardize the integrity of future negotiations between the Company and energy supply companies, which would have an adverse impact on the Company’s customers.

**I. LEGAL STANDARD**

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

. . . [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all

“reservation fees or charges, demand charges, commodity charges and other pricing information”).

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC’s to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC’s efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC’s ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

## **II. BASIS FOR CONFIDENTIALITY**

The Company seeks protection from public disclosure of certain bid and/or price terms that are considered to be confidential, commercially sensitive and proprietary by the Company. The Company is an active participant in the energy-supply market and requires confidential treatment of these terms in order to protect its bargaining latitude and negotiating leverage in achieving energy-resource arrangements such as the one proposed in this filing. The Department should protect these competitively sensitive terms from public disclosure for the reasons discussed herein.

- **Exhibits AG-1-1(b)(Att.) through (g)(Att.)**

Exhibits AG-1-1(b)(Att.) through (g)(Att.), each CONFIDENTIAL contain bid-related information offered to the Company in the context of the Company’s solicitation

of gas supply resources. Specifically, Exhibits AG-1-1(b)(Att.) and (c)(Att.) contain bid-related terms offered by respondents to the Company's RFP process and Exhibits AG-1-1(d)(Att.) through (g)(Att.) are documents reflecting the Company's analysis of the bids offered to the Company. Each of these exhibits contain information regarding explicit price terms or terms that factor into the calculation of prices offered to the Company in response to its RFP and used by the Company to analyze the bids offered in this solicitation.

Disclosure of these bid- and price-related terms has the potential to cause substantial harm to NSTAR Gas, which may in the future negotiate similar agreements with other participants in the Massachusetts gas market. Specifically, disclosure of the terms may create a circumstance where NSTAR Gas would be compelled to negotiate against the prices set forth in the economic analysis in virtually every subsequent contract.

In addition, if prices were disclosed, important, competitively sensitive information regarding the results of a request for proposals process conducted by the Company would be disclosed, making it difficult for the Company to attract bidders in a subsequent bid solicitation process. Such outcomes would also be contrary to the interests of the Company's customers in that disclosure of the pricing terms would potentially impede the Company's ability to obtain similar or better prices from other suppliers in the future should it require additional gas supply services.

In short, bid- and price-related terms must remain confidential to preserve the Company's future negotiating leverage and its ability to function effectively in the gas supply marketplace. Disclosure of contract terms may dissuade gas suppliers, who must

protect their competitive position in the national market, from marketing supplies in Massachusetts. Moreover, a lack of confidentiality may discourage suppliers from making concessions or agreeing to specific provisions more favorable to the buyer because public knowledge of such precedents would decrease the suppliers' bargaining leverage in other negotiations.

The harmful impact of price disclosures is well known to the Department. It has consistently held that price information is confidential and recognized that price information is competitively sensitive as set forth in the statute. See Colonial Gas Company, D.P.U. 96-18, at 4 (1996). Indeed, the Department has recognized the gas industry's concerns regarding disclosure of supply contract price terms. See The Berkshire Gas Company, D.P.U 93-187/188/189/190, at 20 (1994).

- **Exhibit AG-1-4(a)(Att.)**

Exhibit AG-1-4(a)(Att.) CONFIDENTIAL contains confidential, competitively sensitive and proprietary information regarding wholesale market prices for Default Service offered to NSTAR Electric in the context of the Company's October 2005 solicitation for Default Service. In addition, specific contract and pricing terms are included therein. This information should be protected from public disclosure to protect NSTAR Electric's future negotiating position when seeking to procure Default Service for its customers.

Furthermore, in its solicitation for Default Service, NSTAR Electric indicated that it would treat all bid information as confidential, and in their bids suppliers requested such confidential treatment. Disclosure of such information could be detrimental to NSTAR Electric's customers who stand to benefit from NSTAR Electric's ability to

minimize the price paid for Default Service power. Therefore, because the cost and performance information in Exhibit AG-1-4(a)(Att.) is competitively sensitive, NSTAR Electric requests that such information be protected from public disclosure.

### **III. CONCLUSION**

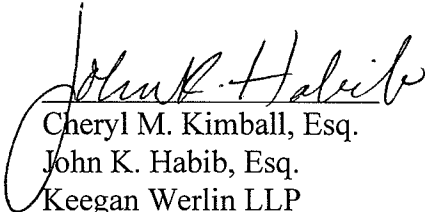
The Department has consistently held that bid and/or price terms are considered to be confidential, commercially sensitive and proprietary. Disclosure on the public record of this information will negatively affect the parties' future bargaining position and could have a negative effect on the marketplace by dissuading potential suppliers from competing in Massachusetts and ultimately causing an adverse affect on the Company's customers.

**WHEREFORE**, the Company respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

**NSTAR GAS COMPANY**

By its attorneys,

  
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